IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1811 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

M/s.A.B. Finance Corporation ...Applicant

V/s.

Mrs.H.K. Bhatty & Anr. ...Respondents

Ms.Fenila Nair for Applicant
Mr.Manoj Dalvi for Respondent No.1.
Mr.Y.M. Nakhawa APP for the State.

CORAM : V.M. KANADE, J.

DATED : 29th OCTOBER, 2007.

P.C:-

1. Heard learned counsel for the Applicant and learned counsel for the Respondents.

2. This is an application for seeking leave to file an appeal against order passed by the Trial Court dismissing complaint under Section 256 of Cr.P.C. filed by the Applicant whereby the Trial Court was pleased to acquit the Accused/Respondent No.1 for the offence punishable U/s.138 of N.I. Act.

3. Learned counsel for the Applicant submits that the Complainant and his advocate were present on number of dates and merely because, complainant and his advocate were absent on 29/12/2005, the Trial Court

was pleased to dismiss the complaint.

4. I have perused the Roznama. Roznama indicates that an application for issuing warrant against the Accused was filed by the complainant and exemption was granted to the Accused from time to time. Under these circumstances, in my view, it was not necessary for the complainant to remain present in the Court on the date on which complaint was dismissed. Discretion vested in the Trial Court U/s.256 of Cr.P.C. has to be exercised judicially. There are number of judgments of the Apex Court and this Court wherein it is observed that merely because complainant is absent on a particular date that by itself cannot be a ground for dismissing the complaint. In my view, the Trial Court has erred in dismissing the complaint on the said ground. Hence, leave is granted. Appeal is taken up for hearing forthwith and is allowed. Impugned order is set aside. Matter is remanded back to the Trial Court. The Trial Court shall hear the complaint on merits and in accordance with law and shall dispose of the complaint as expeditiously as possible and in any case within a period of eight months. Complainant and Accused shall remain present before the Trial Court on 5th December, 2007. Parties to act on authenticated copy.

V.M. KANADE, J.